IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10043 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVCHANDBHAI KHIMCHAND SHAH

Versus

STATE OF GUJARAT (NOTICE TO BE SERVED THROUGH

Appearance:

1. Special Civil Application No. 10043 of 1994
MR PRASHANT G DESAI for Petitioners No. 1-4
MR GM JOSHI for Petitioners No. 1-4
Ms. Pandit, AGP for resp No 1,2 & 3. No. 1
MR AJ SHASTRI for Respondents No. 4,7,8,12 & 13.
..... for Respondents No. 14-23

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/10/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Prashant G. Desai for the petitioners; Ms. Pandit for the respondent authorities. This petition was admitted by this court on 22.9.1994 and the rule was made returnable on 19.10.1994.

Brief facts of the present petitions are to the effect that the petitioners are the owner of the land bearing revenue survey no. 1409 in the city of Jamnagar which are an ancestral lands. On coming into force the

Urban Land (Ceiling and Regulation) Act, 1976, petitioners applied for agricultural exemption under section 20 which was granted by the State Government. In or around 1990, respondents Nos. 4 to 14 illegally entered into the land in question and occupied the same without the consent of the petitioners and, therefore, the petitioners complained before the respondent authorities for taking action for removal of illegal construction and occupation of the said respondents. In view of the said complaint, the respondent No.2 Mamlatdar filed application before the Deputy Collector for initiating action against the petitioners on the ground that there is breach of section 65 of the Bombay Land Revenue Code wherein the Deputy COllector held that there is breach of section 65 of the Code and directed the petitioners to pay penalty and also directed the respondents no. 2 and 3 to take necessary action for removing illegal construction and occupation made by respondents NO. 4 to 14 by his order dated 18.10.1991. Against the said order dated 18.10.1991, the petitioners prefered appeal before the Collector, Jamnagar which was partly allowed and the amount of penalty was reduced. However, the directions for removal of respondent No. 4 to 14 issued to the Mamlatdar and Talati were not disturbed by the Collector while reducing the penalty. The respondents no. 4 to 14 have not preferred any appeal against the order passed by the Dy. Collector as confirmed by the Collector. Inspite of that and inspite of several representations made by the petitioners before the respondent No.2 Mamlatdar for implementing and executing the directions issued by the Deputy Collector by order dated 18.10.1991 as confirmed in appeal by the collector, the respondent No.2 Mamlatdar has not initiated any action and, therefore, the petitioners have filed the present petition.

During the course of hearing, learned advocate Mr. Prashant G. Desai appearing for the petitioners has submitted that the Deputy Collector, by order dated 18.10.1991, directed for removal of the illegal occupation and construction made by respondents NO.4 to 14. He has further submitted that in appeal against the said order at the instance of the petitioners, the Collector has reduced the penalty but has not disturbed the directions for removal of illegal occupation and construction made by respondents no.4 to 14. He has further submitted that the respondents no.4 to 14 have not preferred any petition or appeal against the order passed by the Deputy Collector. However, though the order of the Deputy Collector remains in force and not challenged by the parties who are affected, the

respondent No.2 has not been taking any action for implementation of the said order inspite of several representations made by the petitioners in that regard. He has, therefore, submittied that some suitable directions are required to be issued directing the Mamlatdar to implement the said order.

Learned AGP Ms. Pandit has submitted that if some suitable directions are issued by this court, then, the respondent authorities will certainly take appropriate action in accordance with law for implementing and executing the directions issued by the Deputy Collector in order dated 18.10.1991.

Learned advocate Mr. A.J. shastri appearing for the private respondents has submitted that if the directions are issued by this court for implementing the order dated 18.10.1991, then, such directions may be ordered to be implemented after the Diwali Festivals because he is not having any instructions from the respondents.

Considering the facts and circumstances of the case and the submissions made by the learned advocates for the respective parties, respondent NO.2 is directed to take immediate action to implement and execute the order dated 18.10.1991 passed by the Deputy COllector in respect of the land in question. However, considering the request made by Mr. A.J.Shastri, it is directed that these directions issued by this court will be implemented by the respondent No.2 Mamlatdar after the Diwali Festivals, without any further delay. With these observatrions and directions, the present petition is disposed of. Rule is made absolute in terms indicated hereinabove with no order as to costs. Direct Service is Permitted.

6.10.2001. (H.K. Rathod,J.)

Vyas